

REMARKS:

Claims 95-109 are currently pending in the application. Claims 95-99, 101, 102, and 104-109 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,327,279 to Guibert. Claims 100 and 103 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,060,701 to McKee et al. Claim 109 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 1 of U.S. Patent No. 6,874,495.

New Claims 110-116 are hereby added. New Claims 110-116 are directed to a method of speed cooking a food product by directing heated gas and microwave energy toward the food product.

Rejections Under 35 U.S.C. § 103(a)

Claims 95-99, 101, 102, and 104-109 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,327,279 to Guibert.

The Examiner states that Guibert teaches an invention substantially as described in applicant's claims 95-99, 101, 102, and 104-109 by teaching a system and method of speed heating a food product with gas comprising the steps of providing a housing 10, defining a heating chamber (area within compartment 14), and providing at least three means 14a, 14b, and 14c for directing gas into the heating chamber. The Examiner also states that heating means in the form of heaters 18 and 19 and a blower 15 and motor 16 are provided to selectively control a flow of air through the holes in the compartment 14 to propel the air at high velocity causing collision in order to rapidly heat food products placed therein. The Examiner further states that Guibert discloses conduits As1 and As2 for directing gas to and from the chamber.

The Applicant reiterates here all of the arguments and distinguishing comments previously submitted in the subject application related to Guibert. Guibert clearly does not teach the use of gas directing means disposed above the food product, and Guibert does not teach turbulent colliding the gas over the food product to speed cook the food product. Guibert discloses a hot-air oven for reheating packages containing frozen, pre-

cooked meals. The frozen meals are each contained in a tray 12 with a lid 12A that seals the contents during reheating. A stack of trays 12 is loaded in a compartment 14 having three angled side walls 14a, 14b, and 14c with ventilation holes therein. The oven includes a fan 15 and heaters 18 and 19 to circulate air through the ventilation holes in the side walls 14a, 14b, and 14c so that hot air warms the trays and the food held therein. The heaters 18, 19 are cycled on/off so that the food in the trays 12 is not overheated such that the outside of the food is scorched to a temperature above the service level while the inside layers of the food would be at a temperature below the service level. Thus, the meals in the trays 12 are only heated to the appropriate service level and are not capable of being cooked from an uncooked condition by the oven disclosed in Guibert.

The purpose of the compartment 14 is to accommodate a stack of trays and to provide for the desired air flow necessary to heat the trays. Nowhere in the disclosure of Guibert is a method of cooking food discussed, let alone the method of speed cooking as recited in Claim 95, including colliding gas in close proximity to the food product. There is no disclosure or suggestion in Guibert that the air streams entering the compartment 14 do, in fact, collide before exiting the compartment. Indeed, the suggestions are to the contrary. Figure 2 of Guibert indicates the general circulation of air passing through walls 14a, 14b, and 14c of compartment 14. Rather than indicating colliding air, the arrows shown in Figure 2 illustrate heated air passing through the walls, flowing through the compartment 14 in a generally back-to-front direction and exiting the open front side of the compartment 14. The arrows are not shown to meet and do not otherwise indicate "colliding air" at any point within the compartment 14. Nowhere does Guibert recognize the advantage of providing the colliding air streams, as claimed in the subject application, so there is no reason to believe that the Guibert oven will accomplish this result.

The express purpose of the Guibert unit is not to "cook" food; rather, the Guibert unit is designed to reheat pre-cooked food, i.e., food which has already been cooked. As stated in col. 5, lines 33-36, for example, Guibert's unit "acts only to reheat and does not recook or otherwise impart the quality of the meals, hence repeated reheatings and

refreezings can be tolerated." Indeed, Guibert takes specific steps to avoid heating the food to a temperature in excess of a service temperature which might otherwise result in "recooking or scorching" of the outer layer of food (see col. 7, lines 3-17). Applicant submits that a skilled person would not be motivated to disregard these express teachings and use the Guibert unit to cook food.

Applicant submits that the Guibert invention recites nothing more than a convection oven with stacked trays, said trays forming air passage channels therebetween. The examiner's position is that since at least two air flow arrows are in close proximity to each other, these arrows illustrate collision of gas, even though no interaction between the air flow arrows is shown diagrammatically or described. As taught, the Figures of Guibert do not illustrate such gas flow collision and the text of Guibert does not describe such gas flow collision. Indeed, the words "collide" or "collision" never appear in Guibert. The Examiner relies upon personal knowledge, assumption and impermissible hindsight; and the examiner has failed to make a *prima facie* case of obviousness.

The examiner states: "Guibert clearly discloses that the gas/air streams passing through the angled portions of the compartments walls (14) are moving as high velocity and around the trays (12) the heat air flows would necessarily come into contact (i.e. collide) with one another in order to perform their intended function of rapidly transferring heat to the food product." The examiner inappropriately equates the words "collide" and "contact". One skilled would not equate these terms and a logical common sense differentiation is as represented by Webster wheren *collide* is "to come into violent contact, strike violently against each other, crash". Webster defines *contact* as "the act or state of touching or meeting (two surfaces in contact)". Applicant asserts that if the air flows of Guibert were to collide, as the examiner asserts, these air flows would not "jointly exit the chamber formed by compartment (14) at the end of panel (14f) (as shown by the single arrow)" as asserted by the examiner. Instead, due to the random action caused by collision of the gas, multiple gas flows would exit the chamber. Such multiple gas flows, from such collision is illustrated in FIG. 6a of Applicant's drawings but is found nowhere in the Guibert disclosure.

Even assuming, arguendo, the examiner's position could be well taken, Guibert and the other references of record lack a showing or suggestion of a method of speed cooking a food product comprising the step of cooking the food product by colliding the gas from a first and second means for directing the gas in close proximity to a surface of the food product. The Examiner's statement that it would be obvious to use the Guibert unit to cook is nothing more than hindsight.

The Examiner concedes that Guibert desires only to "heat" the food product, not to "cook" the food product. The Examiner relies upon MPEP 2144.04 (II)(A) for the proposition that the elimination of a step and its function is obvious if the function is not desired. The Examiner states that it would have been obvious to a person of ordinary skill in the art to eliminate the heat interruption step in Guibert if one is not concerned with merely heating a food product to allow it to be refrozen.

Applicant submits that the Examiner's reliance upon MPEP 2144.04(II)(A) is not well taken. The Examiner states that "Guibert desired only to heat the food products" and cites to Guibert for the idea that "the purpose for not cooking these products is so that they may be refrozen for later use." See col. 5, lines 29-37. However, MPEP 2144.04(II)(A) is directed to omission of a step and its function. The Applicant submits that claims 95-109 do not omit a step taught or suggested by Guibert. Instead, Applicant replaces the Guibert step of supplying heat in an interrupted manner with the step of continuously supplying heat to cook the food products. Guibert states that uninterrupted heat will re-cook or scorch the outer layer of the food, but "the intermediate layers and the core would still lie below the service temperature." This is in direct opposition to the function of the present invention, which is to thoroughly cook food products in all layers without scorching. Applicant submits that the Guibert reference clearly shows that a person of ordinary skill in the art *would not* recognize that the method and system of Guibert can be used to cook food products, and that the rejection based on MPEP 2144.04(II)(A) should be withdrawn.

With regard to the limitation that the food product is exposed, the Examiner states that the Applicant does not define how the surface of the food product is exposed. The

Examiner assumes that the "Applicant is unconcerned with sealing the food product during heating and accordingly does not include any lid over the food product." The Applicant respectfully takes exception to any such unfounded assumptions by the Examiner. The Examiner further states that the "exposed surface" feature is not relevant because a food product is not positively recited in the claim. The Applicant submits that the Examiner is confusing an apparatus claim with a method claim. Claim 95 is a method claim which recites the step of cooking food by the act of colliding gas on an exposed surface of the food. This act is positively claimed and is not shown in the prior art. Nevertheless, the Applicant submits that the Examiner's comments are now moot in light of the amendments to Claim 95.

The Examiner's position that it would be obvious to remove the lids of the trays to expose the surface of the food to colliding gas is without foundation and may actually render the Guibert device ineffective. Guibert's trays are handled in batches rather than singly. As shown in Figure 1 of the Guibert patent, a stack of trays T is nested within the case 10. The lids of the trays cannot be removed because the lid of a lower tray is used to support the tray above it.

The Examiner states that the air streams entering the compartment 14 of Guibert must necessarily collide to perform their intended function of rapidly transferring heat to the food product. Applicant again respectfully disagrees. Nowhere in the specification does Guibert disclose collision of gas and nowhere in the drawings does Guibert illustrate colliding gas. The Examiner further states that the gas streams must collide because they jointly exit the compartment at the end of the panel 14f. Applicant respectfully disagrees and again draws the examiner's attention to the difference between *contact* and *collide* as previously presented. The streams may contact one another in a relatively smooth confluence, without colliding and the heat may be transferred by laminar non-turbulent flow of hot gas. Further, the stacked trays in the compartment 14 have spacer elements 12B along their bottoms, so that when the trays are stacked in the unit, air spacings exist therebetween to admit hot air (see Col. 5, lines 41-44). The specific configuration of these spacer elements is not clear, but it is entirely possible that they would also direct the gas such that collision is prevented. In Guibert's 4,112,916 patent,

the spacers are referred to as "ribs," suggesting something long and entirely capable of directing air flow in certain directions. For these reasons, the Applicant submits that the flow arrows in Guibert do not establish that the air streams "collide," and there is no disclosure in Guibert indicating that they do. Indeed, there is absolutely no need for colliding turbulent air flow in Guibert. Guibert's oven will function to warm the food within the containers without any collision of air streams. On the other hand, Applicant's claimed method relies on colliding air in close proximity to a surface of the food product to cook, not merely warm, the food product.

With regard to Claims 104-106, the Applicant submits that the claimed ranges of velocity are much more than simply "optimizing the prior art disclosure of high velocity." Guibert generates air flow by using a simple propeller fan 15 to direct air through holes in the compartment walls. The skilled person would understand that Guibert's system would not generate air velocities anywhere close to the ranges specified in claims 104-106. This conclusion is reinforced by the fact that Guibert describes a relatively slow process for reheating pre-cooked food which takes about 60 minutes (col. 4, lines 11-15; col. 5, lines 24-28). On the other hand, Applicant's claimed method is for "speed cooking a food product with gas", and the cooking times involved are typically in the range of 1-5 minutes, at least in part due to the much higher gas velocities. This difference is more than a matter of optimizing the prior art and represents cooking food products at up to and in some instances 10 times faster than conventional cooking to a taste, texture and quality level as high, or higher, than conventional cooking. There is absolutely no ability to optimize Guibert to accomplish speed cooking as described by Applicant. This difference results in Applicant's completely different process, i.e., a high-speed cooking process, not a low-speed warming process where the express intent is not to cook.

Claims 95 and 109 are hereby amended to clarify that the gas directing means are disposed above the food product and that the gas flows are turbulently collided near the surface of the food product. As such, the Applicant respectfully submits that Claims 95 and 109, as amended, are in condition for allowance. Claims 96-103, 107, and 108 are not hereby amended, but remain dependent upon Claim 95 and intervening claims. As such, the Applicant respectfully submits that Claims 96-103, 107, and 108 are in

condition for allowance. Claims 104-106 are hereby amended merely to clarify the clerical errors in the units of measure.

Claims 100 and 103 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,060,701 to McKee et al. The Examiner concedes that Guibert does not teach all of the limitations of Claims 100 and 103. The Examiner relies upon McKee et al. for the limitations of the damper means and the variable speed motor. The Applicant submits that neither Guibert nor McKee et al., either alone or in combination, teach speed cooking a food product by using gas directing means disposed above and below the food product such that the gas flows are turbulenty collided near the surface of the food product. As such, the Applicant submits that it would not have obvious for a person of ordinary skill in the art at the time of the invention to combine Guibert and McKee et al. to arrive at the claimed invention. Claims 100 and 103 are not hereby amended; however, Claims 100 and 103 remain dependent upon Claim 95, which is hereby amended, and intervening claims. As such, the Applicant respectfully submits that Claims 100 and 103 are in condition for allowance.

Claim 109 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 1 of U.S. Patent No. 6,874,495. Filed herewith is a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a "Prior" Patent that has been properly executed by an attorney of record in the subject application. The Applicant submits that the Terminal Disclaimer obviates the Examiner's double patenting rejection of Claim 109. The \$130.00 fee for Terminal Disclaimer was submitted with Applicant's Preliminary Amendment filed 22 March 2006.

INTERVIEW SUMMARY:

A personal interview was conducted with Examiner Josiah Cocks on 2 October 2006. In addition to Examiner Cocks, Applicant David McFadden and Applicant Representatives David Bolton and Dean Russell were also present. Prior-art references Guibert and McKee et al. were discussed. No exhibit was shown.

Applicant's representatives and applicant argued that Guibert did not disclose colliding gas-flows. Applicant's representatives and applicant argued that the flow arrangement identified by the examiner in Guibert would not produce colliding flow. The examiner asserted that at least two of the flows identified in Guibert would contact one another and that this contact was properly regarded as the recited "colliding". Applicant's representative also asserted that the assertion by the examiner of what an "exposed surface" was in Guibert was not a proper characterization of that reference. The examiner disagreed and maintained the position in the prior Office Action but would consider any arguments to the contrary in the response.

As noted earlier, however, Applicant has revised independent claims 95 and 109 as proposed by the examiner during the interview. Applicant understands such revisions clearly distinguish Guibert. Hence, regardless of Applicant's and the examiner's differing positions as to the validity of the prior rejections, at least claims 95-109 should now be allowable.

CONCLUSION:

Filed herewith is a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a "Prior" Patent and a Request for Response Within the Third Month.

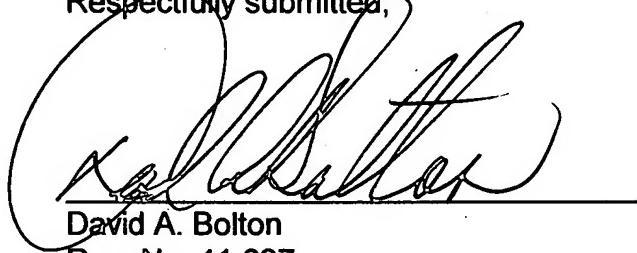
Also enclosed is Check # 5425 in the amount of \$1,150.00 to cover the \$1,020.00 fee for the Extension Request for Response within the Third Month and \$130.00 Terminal Disclaimer Fee.

October 10, 2006

Date

(Email)

Respectfully submitted,



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